

The New Bush Lawyer's Handbook



A legal manual for New Zealand activists



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The New Bush Lawyer's Handbook

A guide to law and order for political activists

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Introduction

THIS is a guide for activists facing police attention – it provides a short introduction to the arrest situations and legal processes often faced by activists.

Law is an alien world to most people. We have tried to make this pamphlet as simple as possible, but it may still get confusing. Hopefully if you read it through, everything will become clear.

Nothing here can be taken as gospel, as the law changes all the time, both by acts of parliament and following from precedents set by judges' decisions.

Try and keep up with the latest court cases involving activists and approach them for information. Often the best legal advice comes from somebody who has just fought a similar case. Nothing beats going through a court case yourself for a crash course in law!

This pamphlet was inspired by the original Bush Lawyer's Handbook published by the Progressive Youth Movement back in the 1970s, and some material is updated from a series of articles published in the anarchist magazine The State Adversary during the 1990s.

Mind how you go.

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Knowing your rights

RIGHTS are a pretty vague concept in New Zealand law – the Bill of Rights Act supposedly details what rights you are entitled to, but what these mean in practice isn't spelled out. 'Rights' are mainly derived from what judges have said is reasonable in particular cases.

Don't expect police to pay much attention to them, but make as much fuss as possible if your rights are broken. Civil rights weren't handed over by the state without a fight and they'll be lost if we don't keep fighting to maintain and strengthen them. Nobody said life was going to be easy.

You don't have to respond to police questioning at all unless the police have some reason to question you. Despite what you may have been told, the police do not have a general right to be told your name and address. They are entitled to ask for it, just like anyone else, and if you choose to give it, that's up to you.

However, there are a lot of laws that require you to give your details in particular circumstances, some of which can be interpreted to apply to most cases, especially by the average cop who, it must be said, can show considerable imagination when it comes to believing that a law says what he or she wants it to say. Usually they will find one that fits, but it's surprising how often asking "why do you need to know?" seems to stump them. Until they give you a reason, immediately handing over your details is just making their job easier for them.

You must give your details if you've been arrested, are driving a car, or if the police suspect you of having committed an offence (they usually claim a burglary has been committed and you fit the description, no matter how unusual your appearance, always ask for the details of the supposed offence if they try this on). They can also demand your details under Section 9 of the Trespass Act if you are on private property or under the Transport Act if you are on a

public road or footpath. In all these cases you must give your name, address, occupation and birth date.

If they give a reason that is clearly ludicrous you may have reason to make a complaint to the Police Complaints Authority.

If you've been arrested ask what you are being charged with. Don't make a statement, do ask for a lawyer. If you're injured ask to see a doctor. Ask to make a phone call if you want, you don't have an actual 'right' to a phone call, but police will usually let you make one if you ask.

The police can only search them if you allow them (silence is taken as assent), if they have a search warrant, or if they have reasonable grounds to suspect you have drugs, a knife, other weapon, or explosives, or if you are at an airport, railway station, wharf or harbour area and are suspected of having stolen goods. If police demand to look in your bag, pockets, house or whatever, refuse unless they tell you why they want to and what they are looking for.

They can also search you if you are suspected of breaching a local alcohol ban, but as you are allowed to be carrying alcohol to be consumed elsewhere, they have to give you a chance to take the alcohol out of the area.

When the police ignore your rights write everything down as soon as possible so you can make a complaint. If you have been injured take photos and get a letter from a doctor detailing your injuries. Keep all statements and letters carefully filed.

This goes for any incident you have with the police – write everything down straight away. This is far more important than it sounds.

Avoiding Arrest

ARRESTS are a bloody nuisance. It takes up heaps of time, money and energy going through the court processes, even if you get off in the end. If you don't there is the added hassle of fines, community service or worse. All this detracts from the real work of overthrowing the state and saving the world.

If you have to choose between being arrested and getting the hell out of there, my advice is to choose the latter. Some people consider arrests a good way of attracting attention to a political cause. This can be true, but you need to decide if the time, energy and money spent in court, preparing a defence, meeting and paying for lawyers and possibly paying a fine or doing community service is worth it. It sometimes is and sometimes isn't.

If you get arrested and go on to fight a court case, don't expect to get through the whole process in much under a year.

On rare occasions activists deliberately get arrested in order to force a court to consider a loophole or injustice in the law. This can be very effective, but you have to be very sure of your facts.

Another philosophy holds that it can be a strong protest to carry out an illegal act without attempting to avoid the legal consequences in order to highlight the injustice of the law. Again, this can work well in the right circumstances. You usually need a strong and vocal campaign behind you to explain your reasons to the public, otherwise the message is likely to get lost. Of course, most arrests of activists aren't intentional on our part.

Getting arrested accidentally usually happens one of three ways: you get angry and do something silly; you are doing something a little bit dodgy and misjudge the tolerance of the forces of law and order; or a cop gets out of bed on the wrong side and decides to have a go at you for no particular reason.

There is not much you can do about the latter eventuality, but it helps to have a good knowledge of the law. Remember, the more often cops get into trouble when they make unwarranted arrests, the more cautious they will be in the future. If it is clear you know what you are doing and are going to fight it out in the courts every inch of the way, they may decide to save the hassle and drop the charges.

The main technique for avoiding arrest is knowing just how far you can take things. There are no clear legal boundaries between what is legal behaviour and what isn't, it depends on the circumstances and the attitude of individual cops.

Police may be quite happy to let you get away with things if you are out of sight of the public, media and 'important' people. Arresting people means lots of paperwork and they don't usually do it just for fun. Arrests often happen because they think they will look bad if they don't do something. Sometimes you can get away with something if it is short and sharp, but if it continues, they will eventually decide they are being made fools of, and lumber into action. Police don't like to look silly, especially in the presence of people like diplomats, royalty and politicians, so policing will be heavier if such people are around.

Liaising with police before demos can give you an idea of what actions the police will tolerate and what will result in arrests. This can't be guaranteed as police operational commanders may ignore the advice of the liaison officer.

People are more likely to be arrested if they can be singled out from the crowd. If a thousand people are doing something mildly illegal, the police are unlikely to bother trying to make arrests. One person doing the same may be in trouble. Good organisation can prevent this happening by stopping cops picking out 'ringleaders' (real or imaginary).

The charges

There are three common charges laid at demos, obstruction, assault and disorderly behaviour. Obstruction means intentionally preventing, delaying, or making it harder for police to carry out their duty.

It usually refers to physically preventing a cop from doing something, but could also be used against somebody who, for instance, deliberately blocks a cop's view while an offence is committed, or warns an offender of the approach of a cop.

In recent years, a huge number of the arrests at demos have been the result of people allegedly obstructing the police following a prior arrest. If you see an arrest and try to intervene or get in the way, bear in mind you are risking arrest. Don't pile in on instinct or out of bravado. But also remember that cops are much less likely to make arrests if they think it could cause the situation to get out of their control.

The best advice is to know what you are doing and don't risk arrest doing something pointless and ineffective. If there's a hundred of you and only three cops, you may be able to prevent an arrest, if there's ten cops and two of you, intervention isn't going to achieve anything. Be careful out there.

Assault

Assault means any unwanted physical contact, you don't have to injure, or intend to hurt someone to be charged with assault. Shaking hands is OK, but brushing against a cop during a scuffle may not be.

Disorderly behaviour

This is a nicely undefined charge. What is disorderly is very much a matter of opinion. Throwing things, kicking police cars, banging on windows and being impolite in the presence of important people are the sorts of things covered. It tends to be a catch-all for when the police can't think of anything else to charge you with.

Breach of the peace

This isn't a criminal charge, it is a way for the cops to get you out of the way in order to bring a situation under their control. Arrests for a 'breach of the peace' are common law arrests, rather than statutory arrests. This means there is no act of parliament giving the police the power to arrest you for breaking a law as is the case with other forms of arrest. However, it has been established in court that police are able to arrest a person they believe is 'breaching the peace'.

This covers very minor acts of bad behaviour. There are no charges and you don't go to court or face punishment. You will be held at the police station for a while and then released.

Trespass

Trespass is when you're where you shouldn't be. You are trespassing if you have been given a warning to leave private property by an occupier, owner or other person with delegated authority such as a cop, and have not left by the shortest practical route. You only have to be given one warning, it used to be three, but this has been changed.

The warning must be verbal or written, a 'No Trespassing' sign doesn't count. You have the right to go on to property for lawful reasons until you are told to leave, but if you break into a building you can be charged with burglary, regardless of whether you take anything or not.

You can also be charged with being unlawfully in a building, which doesn't require you to be warned, but if you can credibly claim you weren't intending to commit a further crime, you should get off.

Delayed arrests

A growing trend in policing is to avoid making arrests in crowd situations, and instead identify people to be arrested later. Don't assume that

if you get away with something at the time you are safe. Police in Britain refined this technique at the Trafalgar Square Poll Tax Riot in 1990, when they videoed the crowd and picked out people to be arrested while watching the video in the comfort of the police station.

Video units began turning up at New Zealand demos in the early 1990s, but police mainly rely on still cameras. Look out for plainclothes cops with cameras and especially note if they are being directed to take photos of someone by one of the top cops. Warn anybody you think has been pointed out to be photographed.

Activists have woken up to a copper's knock on the door up to six weeks after an incident has taken place, so don't relax too soon if you've been involved in some sort of confrontation.

For the delayed arrest method to work, they need to know beforehand who you are, and where to find you, but a cruder version of the same technique is to pick you up as you leave a demo, or to wait until most of the crowd has gone before moving in.

To avoid such arrests you can do two things: avoid identification or get away quickly. If you go to demos with a bright blue mohawk or wearing an orange caftan, it's going to be pretty easy for a cop to remember which member of the crowd it was who lobbed an egg at the prime minister. Covering your face with a scarf or face paint can make identification difficult, or much easier – it won't help if you are the only person at the demo wearing a black balaclava. An unobtrusive hat can hide your hairstyle. Or you can try wearing something that can quickly be stuffed into a bag or pocket if you need to change your appearance.

Bear in mind that, given New Zealand's small population, police soon get to know the faces (and often names) of regular activists. Large numbers equal anonymity. Just because wearing masks, or whatever, works in Europe doesn't mean it will work here.

If you've been doing something a bit dodgy and notice a cop

has pointed you out to another, or made a serious effort to take your photograph, you are probably going to be arrested. Stick in the middle of the crowd until you can leave the scene unobtrusively. Check out escape routes beforehand if you are intending to get involved in dodgy activity. Duck into a shop or arcade and leave by another exit or blend into a shopping crowd. And avoid police stations for a while.

If you're at a demo and someone else is attempting to avoid arrest, try and cover for them, but beware of getting done for obstruction yourself. Acting stupid can help here.

If arrests seem likely, a demo should move away from the scene as a whole and disperse elsewhere. Sometimes cops ask you to come away from a crowd "just to have a chat". This means they are planning to arrest you. Don't go with them – you don't have to. Head in the opposite direction, or preferably into a crowd, then leave.

Attitude problems

Certain police have attitude problems and seem to go out of their way to stir up trouble. So do certain people at demos. Winding up or harassing cops doesn't seem to achieve anything except to reinforce their negative attitudes towards activists.

Generally, it's not a good idea to talk to cops. However, while talking to them intelligently about the issues involved isn't likely to achieve much, but it lets them know you're human, sometimes you can find out some useful stuff and they are probably less likely to beat up someone they've been chatting to than someone whose been screaming in their ear for the past half hour (but remember to watch what you say, don't let slip information they can use). One Wellington liaison cop spent too much time chatting to activists at demos, became disillusioned with his job and quit. He even helped organise some anti-nuclear protests.

The Diplomatic Protection Squad, police whose job is to protect 'important' people, have a reputation for high-handedness

and general belligerence. They take their job very seriously and should be treated with particular care.

The same goes for the Strategic Response Groups, also known as Team Policing Units, the nearest thing New Zealand has to a riot squad. They are usually larger-sized cops responsible for doing the jobs involving physical violence. Look out for any group of cops wearing black leather gloves, they are usually a sign that the cops are intending to use batons or make arrests (or that it's a bit chilly).

You could try quoting the Police Manual of General Instructions, Section D31 paragraph (2) "In policing demonstrations, members of the police shall ensure they... exercise a high level of tact, tolerance and restraint... always be completely impartial."

I doubt if it will do any good.



OF COURSE PEOPLE
HAVE A RIGHT TO PROTEST
-BUT NOT DURING
SHOPPING HOURS!

Once you've been arrested

IF you've been arrested as part of a protest, the first thing you should do after you are released from the police station is to write out a detailed statement of what happened before and during your arrest (see the section later on in this chapter). Do it before going to the pub.

You may be required to answer detailed questions on the circumstances of your arrest as much as six months later – or possibly years later if legal action is taken against the police. There is no way you will be able to remember the events without something to jog your memory. It is especially crucial to get the events in the correct chronological order.

If several people have been arrested you will usually be handcuffed and placed in a van. You'll have to wait around for them to finish arresting people before you get driven to the cop shop and have the handcuffs removed.

At the police station

Above all, don't say anything or make a statement. Don't be belligerent about it. Give them your name, address, age and occupation and answer no further questions, no matter how innocent or friendly they may seem.

Police will routinely lie to you, telling you the other people have all made statements, or that they will drop charges if you cooperate. Often they will get you talking by pretending to be just being chatty. They may use the old 'Good Cop, Bad Cop' routine, where one cop is angry and threatening, then is called away and replaced by a friendly, cheerful one, whose job it is to get you talking. This can be surprisingly effective if you're under stress.

Remember, no cop is ever off-duty, anything you say will be used against you. However, if you feel confident about it its amazing how much information cops will spill if you can get chatting. Just watch what you say.

Don't sign anything except the sheet listing property they have taken from you – and make sure it is correct. If you had a camera when you were arrested check the film is still there.

Usually you will be held for a few hours, photographed and fingerprinted, then released on bail. Sometimes they will keep you in a cell for a while out of spite. They can hold you until court the next day, or until Monday morning if you were arrested over the weekend, but seldom bother unless they think you won't turn up to court.

Bail just means signing a form to say you'll turn up in court – you don't need to hand over money or anything. If your lawyer is called to the police station, they can demand access to you. The police will usually mess them around, keep them waiting and make things difficult.

First court appearance

Usually you will be released on police bail until court the following Friday. Expect to spend all morning waiting to be called.

The court process is confusing, see the diagram on page 15 for a summary.

If you haven't already seen a lawyer, get to court early and ask to see the duty solicitor – a lawyer who will give you free advice. Try not to rely on this as the advice isn't likely to be very good, and duty solicitors are too busy to spend time getting the full details of your case. They're OK if you just want to ask about court procedures or help you apply for legal aid.

At this appearance very little will happen. You will be called to stand in the dock and you, or your lawyer if you have one, will be

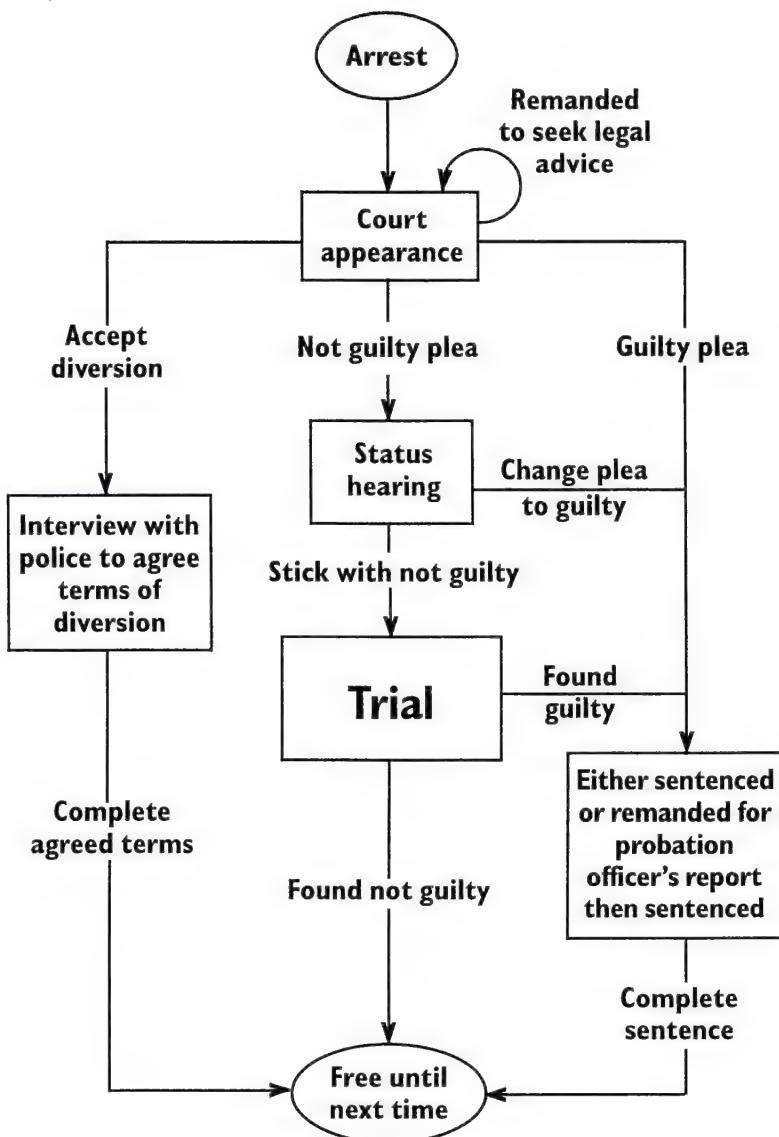


Figure 1. Summary of the court process following an arrest

asked what you want to happen next. You can either enter a plea (guilty or not guilty) or ask to be remanded to seek legal advice. This means the court appearance is put off to a later date. You'll almost certainly be released until then, although in very serious cases you can be remanded in custody, i.e. put in prison until the later date.

Most people ask to be remanded for two weeks to give them time to talk to a lawyer or consider their options. You will have to enter a plea at this later date.

If you plead not guilty the judge will fix a date for a status hearing (see below).

If you plead guilty, a police sergeant or police lawyer will briefly explain what you were arrested for. You or your lawyer will state any reasons why you should get off lightly – such as the offence being of a minor nature, your lack of previous convictions or your good character. The judge will either sentence you or remand you to appear in court for sentencing at some time in the future.

It is also possible that the police will decide you aren't worth the trouble and drop the charges.

If the police issued you with bail conditions when they released you, the judge will review them and may change or remove them. While this is being organised you may be put into a cell for up to two hours, so take all your belongings with you when you get up to enter a plea or ask for remand.

If you are going to contest the case (plead not guilty) get a legal aid form to pass on to a lawyer (if you choose to use one). Legal aid should pay for a lawyer if you are on a low income and don't own substantial assets. If you are turned down for legal aid, you can appeal to the Legal Aid Review Panel for the decision to be reconsidered.

Diversion

If you have no previous convictions and the offence is minor, the police may offer to drop the charges in return for you admitting guilt and carrying out community service and/or making a donation to a fairly mainstream charity. This is a police decision and has nothing to do with the court, so you won't get a criminal conviction, even though you have to admit guilt.

It is supposed to be up to the police to offer diversion, but you can ask a lawyer to seek diversion on your behalf. This may be a useful option if you are intending to leave the country or have some other reason why a lengthy court case is difficult for you.

In some cases people have taken diversion, paid the fine or done the community service, only to see everyone else arrested for the same thing being found not guilty and getting off scot free.

Usually, you can only get diversion once. Once played, your 'Get out of jail free card' is gone. Strictly speaking, you can get diversion for another offence if it is distinctly different type of offence to the first, but don't rely on it, it's all pretty arbitrary.

Sometimes the cops seem to go ahead with obviously weak cases on the presumption that people will take diversion, so they won't have to prove the case in court. This can give you a chance to win easily, or to have the charges dropped completely. Of course, it can be hard to judge if this is what's happening.

Status hearings

If you plead not guilty, you will be given a date for a pre-trial status hearing where both sides sort out the expected length of the full trial and book a date. This will usually be in a few months, or even a years' time. If you don't have a lawyer you should phone the police prosecutions section before the status hearing to discuss your options.

Status hearings give you a chance to hear the evidence against you and decide if you want to continue with your not guilty plea.

The judge may briefly review the evidence and may offer you a deal – a reduced sentence in return for a guilty plea, or, if you are charged with several offences, an agreement to drop some charges if you plead guilty to others. Status hearings also give you a chance to ask the judge questions about the case.

Neither you nor the police are allowed to use anything said at the status hearing as evidence in the following trial.

Disclosure

Either before or at the status hearing the police should also hand over the evidence against you – their reports, statements, photographs etc. This is the first time you really know what you are up against as their version of events may have little bearing on the reality of what happened

The evidence will consist of the police witness statements and possibly intelligence reports, copies of the orders given to police before the operation, photographs, video tapes, notebook entries, audio tapes, search warrants sometimes objects related to the event ('exhibits'). If you don't have everything you think you should, make a request under the Official Information Act (see the chapter later on).

Once you have the police evidence you can begin to plan your defence to it. You will need to check through all the evidence very carefully and note any contradictions, errors, gaps and suggestions of bias. Especially note any examples of police witnesses disagreeing with each other or with reliable evidence such as photos or video tapes. You will want to question the police on these things when you come to trial.

Aside from the direct value of disclosed documents in your court case, the material is often a great source of information on

the police and how they operate. Make sure you get copies of everything and pass anything useful to people working on policing issues. Don't leave everything to gather dust in a lawyer's office.

The trial

At the full trial the police will give evidence and call prosecution witnesses to do the same. Then you and the defence witnesses give your evidence. This is explained in more detail in the next chapter. After hearing the evidence, the judge may either make a decision, or remand you yet again to hear the decision at a later date. If you are found guilty you will either be sentenced or remanded until a probation report is prepared in order to help the judge make a decision.

Usually a trial is carried out before a judge only. This is always the case if you are charged with what is called a summary offence with a maximum punishment of three months in jail or less. If the maximum punishment is more than three months, the charge is referred to as an indictable offence and you get to choose whether to have a jury trial, or have the case heard before a judge only.

It is rare for a case involving activists to be serious enough to require a jury trial.

Sentences

Few New Zealand activists ever get imprisoned – although it has happened from time to time.

For most political crimes, you will either be fined a few hundred dollars or sentenced to community service. It's very unusual for anything worse to happen for the kind of crimes committed by local activists. Sometimes the judge will order you to make a donation to charity, to pay reparations (paying to fix damage you have done) or simply convict you with no further penalty.

Lawyers

Don't assume lawyers know what they are doing. There are a few brilliant ones, but law is a big field and many know little about the specifics of particular cases. You can often find ways of winning cases that lawyers have never thought of.

Lawyers are usually very busy and are career-oriented, they probably won't put as much time and energy into your case as you think they should. They are also used to running the show and expect you to act as a passive spectator – which is what most of their clients also expect. Make sure you don't end up being dicked around by someone whose interest in the case is academic or purely financial. Also make sure you are clear about how much the lawyer is getting paid, and by who.

Even good lawyers often assume you need to be looked after, rather than seeing you as a partner in the process. Try and change this relationship. In other words, train lawyers to work with activists. Be prepared to contribute your time and energy to the case and your lawyer may learn to appreciate your input..

Cases involving activists often attract more legal and media attention than those of ordinary crims and a high profile case can do wonders for your lawyer's career. This encourages them to work with activists in the future, even when there may not be a lot of money forthcoming.

Winning cases

Remember that we frequently win. Police are used to dealing with people who are often uneducated, inarticulate, out of their depth and weren't smart enough to avoid getting caught. Activists are often a bit more of a challenge.

Many offences activists are commonly charged with are open to interpretation. For example, it is very arguable as to what sort of

behaviour can be legally considered ‘disorderly’. The charge of ‘obstructing a police officer’ requires the police to prove that you were not only obstructing him or her, but also that you prevented him or her carrying out an action that he or she was required to do. If the officer was acting against police regulations (which is common) or was doing something that wasn’t required to uphold the law, you can’t be found guilty.

Police also lose a surprising number of cases through stupid mistakes – mixing up people’s identities, making wild exaggerations, forgetting things and missing court dates. Remember, they are the last of the traditional public service departments and have the same legendary level of efficiency.

How to write a witness statement

Write it as soon as possible after an incident. If you make notes immediately after something has happened you can refer to your notes while giving evidence in court, if you have written them later you can’t. Exactly how much time you have isn’t clear, but expect it to be hours rather than days.

Don’t say things that you can’t prove and don’t make assumptions about why people are doing things. Say simply and clearly what YOU saw, how YOU felt and what YOU heard.

For example, don’t write: “The cops arrested Steve for being cheeky.” You can’t know for sure why they arrested Steve. You can say: “Steve told the police to stop being wankers. They then arrested him for trespass. I believe they only arrested him because he was being cheeky.”

Remember that it isn’t the police who are on trial. Don’t concern yourself only with how the police were behaving. The point of being a witness is to make a case for the defence, not to make a case against the police – although that may come later.

First and foremost you need to describe the events that led up to somebody's arrest and what they were doing, or not doing, before the police took action. If you are writing about a demonstration, start your statement from the time the demo began. Describe the events in general terms, what the mood of the demo was like, how the police were acting, how many people were there and what they were doing. Go into more detail about the particular incident that sparked the arrest.

Try and remember who was around, where they were standing, what they were doing. Describe everything as accurately and simply as you can and don't exaggerate. Note the times as accurately as you can. If you aren't certain about something say so.

For example, don't write: "A bunch of cops grabbed him and tried to break his arm as they dragged him away."

Do write: "Three police officers took hold of him, one on each side and one behind. The one holding his right arm was a Sergeant. He held Steve's wrist in both hands and twisted it behind Steve's shoulder. Steve was screaming and from the expression on his face looked like he was in considerable pain.

"The three police continued to hold him as they moved him towards their car. They moved him at a rapid walk. Steve appeared to be trying to walk, but they were pushing him forward and he kept losing his footing."

Most of what happens after the arrest isn't very important, but note anything the police say that may suggest they had improper motives for making an arrest. Also note anything you said to the police that may have a bearing on the case. Of course, if it was you who was arrested, you shouldn't have said anything at all.

What happens at a trial

FACING criminal charges in court can be an intimidating experience. The legal system is designed to be difficult to understand and inaccessible to ordinary people. Most judges and lawyers are happy to keep things this way.

This section assumes you have a lawyer conducting your defence for you. You can also do the job yourself, see the section on defending yourself further on in this chapter.

You are expected to keep quiet and do as you are told – let the lawyer and the judge take care of everything between them and tell you the result at the end. This chapter explains some of the things you need to know to avoid being a pawn in the system.

The process

A court case follows a fairly simple procedure: First the prosecuting lawyer – the person whose job it is to get you convicted – will open their case, summarising the legal case against you, then he or she will call their witnesses. Usually these are mostly cops, sometimes an expert of some sort will give technical evidence and there could be members of the public that the police think will say things that will help make a case against you.

Each witness will be asked questions by the prosecuting lawyer (what the witness says at this time is called the ‘evidence in chief’) then the defence – your lawyer – asks questions (called ‘cross-examination’), the prosecution can ask further questions only about subjects your lawyer has raised (‘re-examination’). Finally the judge may ask the witness questions. The same procedure is repeated until all the prosecution witnesses have finished.

Now the defence has its turn. Everything follows the same pattern, except that it’s the defence lawyer calling the witnesses and leading the questioning. First the case is summarised, defence

witnesses are called and questioned, cross-examined by the prosecution, re-examined by the defence and questioned by the judge. Then the judge can call back any witnesses he or she wants to hear from (thus is rare) and may hear submissions from lawyers on legal aspects of the case. Then the judge will either make a decision or remand the case to a later date so he or she can go away and think about it.

When you are being prosecuted, you can decline to give evidence. This means you don't present a defence, you just try and pull holes in the police evidence. Usually you do this when you know you broke the law and don't want the police to be able to question you about what you did. You do not take the witness stand and do not answer questions from either the police lawyer or your own. If you are defending yourself, you may make an unsworn statement regarding technical matters or make submissions to the judge, but they will carry little weight.

This is an option when you are relying on the police evidence to be weak and think you can discredit their case without introducing evidence of your own. Your lawyer will still be able to ask questions of the police witnesses. They still have to prove you committed a crime, even if you offer no defence.

If you are going to court for the first time, the best way to get to know court procedure is to go down to the local court and sit in on a case or two. Tell the people at reception what you are doing and ask which court is going to have a short defended hearing. They're usually pretty helpful.

Planning your defence

You can win a court case in several ways. By having credible witnesses who can convince the judge that the police version of events is wrong, or that you were not the person involved in those events. By convincing the judge that your own evidence is more reliable than that of the police. By introducing technical evidence which proves

you didn't do the deed. By citing a precedent – a similar case – in which a judge decided that a person committing a similar act to yourself was not breaking the law. By arguing that what you did was not against the law, or by the inability of police to prove that the law was broken or by their inability to identify you as the culprit.

You can lose a court case in several ways too. Putting up witnesses who come across badly, blatantly lying, annoying the judge, or even doing everything right, but failing to convince the judge you are innocent. A certain percentage of judges are hopelessly biased in favour of the police or are having a bad day and are going to convict you no matter what. If this happens you're basically fucked, but you may consider appealing the decision.

Research

There are two main kinds of law relevant to criminal cases. The first is statutory law. These are the acts passed by parliament which state what things are crimes and what the penalties for breaking them are (You can refer to these in libraries, look for large volumes of statute books, there will usually be a wall chart index to help you find the particular act you want).

The second is case law. This is all the decisions made by judges in previous cases. Judges are obliged to follow precedents set by other judges in a higher court – for example a district court judge must follow the decision of a high court judge if it concerned similar matters. Likewise a high court judge must follow a precedent set in the court of appeal, and an appeal court judge must follow precedents set by the privy council (at the moment, it looks as if the privy council, based in the UK, will soon be replaced by a New Zealand Supreme Court). Judges also look at precedents for guidance, whether set in a higher court or not.

As you can imagine, there is a massive body of case law. Usually only a few important precedents are remembered. Case law is by

far the more important of the two types of law. Statutory law does little more than list crimes and define them in general terms. Case law adds all the details and provides examples of successful – and unsuccessful – defences.

Researching case law is very time consuming. Summaries of cases are available in some libraries, but it is difficult to find the ones that are useful to your case. Most lawyers rely on just a few well-known examples.

The Police Manual of General Instructions can be a useful tool for activists, especially when facing charges of obstructing police. The manual lays out the procedures police are supposed to follow. It's a pretty massive document and is now only produced electronically – you'll have to ask for it under the Official Information Act (see later chapter), and asking for the whole thing is going to cost you a fair bit. Either get an idea of what section you need, or ask for the contents pages first, then write again for the relevant section. Police are required to follow these instructions under Section 30 of the Police Act so if you can prove they weren't you can argue that the cops in question weren't doing their duty and therefore you cannot be convicted for obstructing them.

You can also use the manual to apply psychological pressure on police witnesses by quizzing them about relevant sections of the manual. Often they haven't a clue what procedures they were supposed to be following.

Identification

The police will need to point you out in court and identify you as the person they arrested, or saw committing the crime. This can be harder than it sounds, especially if they made an arrest during a moment of panic or otherwise didn't get a good look at you. If you're sitting in a crowded court they frequently get mixed up

and identify someone else as you, but note earlier remarks regarding looking inconspicuous at demonstrations.

Obviously, turning up dressed differently to when you were arrested or altering hairstyle or facial hair can help. Don't overdo it and come looking like you've deliberately come in disguise.

Witnesses

You can choose anybody you like to give evidence at your case, if a person is reluctant to act as a witness you can summon them to attend. If a person ignores the summons they can theoretically be arrested and brought to the court, although the judge will need to be convinced that their attendance is necessary, otherwise every scruffy activist would be issuing summonses for the prime minister, the pope and George Bush every other Friday.

If you seriously want to summon a witness, go down to the nearest court and pick up a blank 'summons to witness' and 'affidavit of service' forms. Fill out two copies of the first with the name and business address of the witness, details of the case and details of anything you want them to bring with them (such as items needed as evidence).

On the back, fill out the details of how you gave the document to the person you want as a witness. You can give it to them personally, give it to a member of their family living at the same address or send it by registered post. After that, you need to go to the court with the affidavit of service to confirm that you have delivered the summons.

If you think somebody will be a useful witness, and will be happy to turn up, force them to write a statement about the incident as soon as possible, pass a copy on to your lawyer and keep one yourself. This is vital.

Chances are you'll have been arrested and hauled away before you get a chance to organise witnesses. Consequently, if somebody

is arrested it is important that whoever else is present makes a list of potential witnesses and gets it to the arrested person.

People expecting to be witnesses in a case aren't supposed to contact each other, or anyone else involved in the case, to prevent people sitting down and concocting a story together. Obviously this is a bit unrealistic if witnesses are friends, family work together or are people involved in the same small political groups. After all, the police all work together. However, if the judge has reason to suppose you have sat down and discussed the evidence, your witnesses' evidence will be ignored.

If you are a witness in a case, your boss has to give you time off work, but doesn't have to pay you. You can apply to the court for expenses and an appearance fee.

Giving evidence

Try to relax, take your time and don't let the lawyer questioning you make you hurry. Some police lawyers will try and make you lose your temper. Take a moment to think before answering each question. Speak slowly so the court stenographer making a record of what has been said can keep up.

If you think a question is irrelevant to the charge – such as questions about your wider political activities or lifestyle, ask the judge whether you need to answer it. Your lawyer may also object to questions the prosecution is asking you.

If you don't remember events clearly, say so. Don't try and give details of things you are unsure about, you'll only get tied up in knots. If you don't understand a question, ask for it to be clarified.

If a police lawyer catches you contradicting yourself over a minor matter, the best response is usually to say "Yes, you're right, I made a mistake." This is the last thing they'll expect. If you try and cover up a mistake, any competent lawyer should be able to rip you into

shreds. Most judges won't hold a minor mistake against you if you own up to it. You are useless as a witness if your credibility is lost.

You can't give evidence based on what you heard or what someone else told you happened. This is known as hearsay and is inadmissible as evidence. Despite this, it can still be useful to repeat something a cop or somebody else said if it helps your case. You'll just have to get it out quickly before the judge can stop you. Even if the evidence is theoretically inadmissible it may sway the opinion of a sympathetic judge.

Photographs and videos can be very good evidence, but don't get too excited. Lots of people get obsessed with gathering evidence of police violence or heavy-handedness. This is sometimes useful, but doesn't necessarily make a case for your own innocence. Just because a cop assaulted you doesn't mean you weren't breaking the law as well.

An exception is if you are claiming to have been acting in self-defence or in somebody else's defence. At least one local activist charged with assaulting a police officer has got off on the grounds that the police's violence when arresting another activist justified his intervention. The judge even said he was surprised more people didn't have a go at the cops.

Also remember that camera shake and the limited field of vision can make a video of a minor scuffle involving a few people look like a full-scale riot. Still photos have a big plus in that you can pick out useful ones and not have to sit through an hour of boring footage of people holding banners.

Defending yourself

The procedure for defending yourself is the same as above, except that you do the lawyer's job yourself. You do all the talking and questioning witnesses yourself. You can have a friend along (called a 'McKenzie friend' after the case which set the precedent for this

to be allowed) to sit with you and give you advice, make notes etc. but they can only tell you what to say – they can't speak to the judge or the witnesses themselves.

Defending yourself can be an empowering experience and an excellent way to give yourself a crash course in law. You need to be confident of your ability to get up in court, speak clearly and frame intelligent questions on the hoof. You don't need to know law backwards, but you do need to have a general idea how court cases work and what sort of evidence will get you off and what will seem like irrelevant nit-picking and just annoy the judge.

If you think you are up to speed, and the case isn't too technical, give it a go, you may not be as good as a top lawyer, but you'll be better than most of them.

Political defences

This is when you argue that you should get off because you felt what you were doing shouldn't be a crime. It usually doesn't work, but on rare occasions judges have let people off who argued that they were acting to prevent a greater crime.

Some people advocate using court as a platform for expressing political views. Judges don't like people doing this much and hardly anybody is listening anyway. Unless your case is particularly high profile and you think the media will cover your comments, I'd suggest skipping the politics. If you want to win in court, you have to accept that you are playing by the enemy's rules. Dress neatly, be polite without being fawning and beat the bastards at their own game.

Things you can't do

Unless you are defending yourself, you can't speak to the court unless you are answering a question when giving evidence. You can't take notes in court unless you are a journalist sitting on the press bench, a lawyer, defending yourself or acting as a McKenzie friend.

Appeals

IF you lose a case, you can apply for permission to appeal to the next highest court – the lowest being the District Court, then the High Court, the Court of Appeal and finally the Supreme Court which replaced the London-based privy council. There are two kinds of appeal. The first is when you think the decision broke a point of law. The second is when you think it was generally unfair, or that the sentence was too high.

You need some real grounds to make a general appeal – you can't just appeal because you don't like the decision. Things such as evidence clearly not being given proper weight, judges not following proper procedure or giving improper directions to a jury, or failure to follow established precedents are typical grounds for an appeal. If you think the sentence was too severe for the crime, you can appeal the sentence. The grounds for making an appeal aren't written into law. It's up to you to satisfy the court that you have genuine reasons for taking an appeal.

You can appeal the conviction only, which means that if you lose the appeal, you get the original punishment, or the sentence only, which means you don't challenge the actual conviction, just ask that the sentence be reduced. Or you can appeal both conviction and sentence. The police can also appeal if the judge lets you off, or if they think the sentence was too low. They'll only do this in serious cases.

In both kinds of appeal, you begin by going to the office of the court that convicted you and filling in two copies of a Notice of Appeal form (the forms are published in the *Summary Proceedings Regulations 1958*, which you'll find in a law library, for a general appeal, use Form 36 in the First Schedule, for an appeal in a point of law use Form 34 in the First Schedule). You have to wait until you've been sentenced before you're allowed to file this notice.

After that, you have 14 days to come back to the same court office and file the case. You need to write out the reasons for the appeal, the facts of the case, and the legal basis for the appeal in the correct form. You, or your lawyer, will need to check out the way this must be done. You also need to send a copy to the police prosecutor. The court will then consider whether you have grounds for an appeal and if so, will set a date for a court hearing.



BUT, YOU KNOW,
THAT'S JUST THE WAY
POLICING WORKS...

Police complaints

THE Police Complaints Authority is an independent body set up to investigate complaints against the police. It's seen as a bit of a paper tiger and seldom recommends effective action – even in the minority of cases in which it judges the police to have been at fault.

In the year up to June 2002, the authority received 2792 complaints against the police. Of those dealt with, 106 were sustained in whole or part, 318 were 'conciliated', and 409 were not sustained. Complaint categories ranged from language, attitude, and neglect of duty through to threats, harassment, unlawful arrests and use of force. The PCA acts on complaints from the public and also automatically investigates any deaths caused by police or of people in police custody.

Action against the police is limited to giving a warning, recommending 'counselling' or putting the odd black mark on a cops record. The PCA has never recommended the laying of criminal charges against a member of the police, despite some fairly blatant law breaking.

It may seem, therefore, that bringing complaints to the PCA is a waste of time. However, complaints are a real nuisance for the cops. They take time to investigate and can make police feel uncomfortable. They probably act as a deterrent to police misbehaviour, and are one of the few ways of keeping cops in line. At very least they force the police to justify their actions.

Recently, police media spokespeople have cited a lack of complaints as evidence that they acted correctly. This is ridiculous as it effectively passes the job of maintaining good police behaviour on to the public, but it's still effective public relations. Complaints statistics are also often used to judge standards of police behaviour, if they rise it looks bad for them.

If a cop says: "Well, if you've got a problem, go and make a complaint", you probably should. Even if it's just about that cop's attitude.

Complaints are easy to make. You can make them to a police officer, to the police commissioner or directly to the PCA, the latter is the best option. Make your complaint in writing and keep a copy. Keep all correspondence with the authority and keep your filing up to scratch.

When writing a complaint detail the events as much as possible, identify the police in question as well as you are able and clearly state the exact thing you are complaining about. It's a good idea not to complain too soon after an event as police have a habit of arresting complainants, or those they think likely to complain, in order to cover themselves. This is especially likely if the complaint is serious. Wait a month or so after the incident before sending your complaint in.

Whatever you do, don't tell the media you are planning to complain about police actions until you have actually done so. There is nothing more likely to trigger arrests than the plods reading in the newspaper that a bunch of scruffy hooligans are planning to complain about them.

Once your complaint has gone in, it will be referred back to the police for an investigation. The officers concerned will be interviewed, as will those who make the complaint. Usually they'll ask you to come to the police station for the interview, but if you are unhappy about that, you can ask to be interviewed elsewhere. You are also entitled to have a friend, relative or lawyer with you while you are being interviewed.

Once the police investigation is complete, the PCA reviews their report and decides if any further action is taken. They will write to you and inform you of the outcome. If you are seriously unhappy

about the PCA's conclusion's you can write to the Office of the Ombudsman to request a review of their decision.

The PCA is very slowly moving towards having the capacity to investigate the police themselves, but don't hold your breath. The system of the police investigating themselves is likely to continue for some time yet.

The PCA's address is P.O. Box 5025, Wellington, or phone (04) 499-2050.



I'M NOT AGAINST
ACCOUNTABILITY - BUT IT
ISN'T ALWAYS APPROPRIATE
IN A POLICING ENVIRONMENT!

Legal action against the police

THE main process for legal action against the police is a civil case (lawsuit) directed at the police as an institution. You can also try and sue a particular cop or take out a criminal case (private prosecution) against one who you think has infringed on your rights.

The latter is the most difficult and the least likely to work.

Lawsuits

Generally a lawsuit against the police as an organisation is the best option. You will almost certainly need a lawyer unless you have some legal training or are prepared to put a lot of time into learning the processes.

A lawsuit is an expensive and lengthy process. If you have a sympathetic lawyer and he or she thinks you have a strong case you may be able to get them to work on the basis that they'll get paid if you win. Even so, there will be lots of costs along the way. You may be able to get some legal aid, but don't rely on it.

Expect police to prevaricate as much as possible and do anything to delay getting taken to court. The process will usually take from one to five years. On the positive side you often won't have to actually go to the court as the police usually offer you an out of court settlement – this is simply an offer of money to go away, usually it includes clauses preventing you discussing the terms of the settlement with the media and doesn't include an admission of wrong-doing on the part of the police.

You can take a lawsuit over anything the police have done that has cost you money: Loss of earnings; costs; medical expenses etc. You can ask for compensation for loss of enjoyment of life or psychological damage resulting from police actions. You can also ask for 'exemplary damages', which are pretty much the same as a fine

– a payment made as a punishment, which is intended to make somebody think twice about doing the same thing again.

Normally you go to court demanding far more than you ever expect to get in order to give yourself a position to bargain from. This is pretty silly, but is the way these things are done. A newspaper report in May 2003 said police had received claims totalling over \$4 million over ten months, but had only paid out \$88,000. The biggest single payout was \$18,000 for assault and battery. Generally you can expect up to about \$10,000 for an assault resulting in injuries such as a broken bone, up to about \$20,000 if the injury was very serious, down to about \$1000 for being held illegally. You should get some legal costs on top of this. This might sound good, but the work involved is considerable. In fact, you'd probably get a better hourly rate flipping burgers at McDonald's, so you'd be foolish to take legal action just to get the money.

The process for a lawsuit is much the same as a trial. You begin by filing a document with the court which states the grounds for the suit and the amount of damages being asked for. This will cost you \$120 to file in the District Court or \$900 in the High Court. Then everyone argues about what is allowable by law – the police may go to court to request certain parts of the suit be thrown out on legal grounds before the case goes to a full hearing.

If a lawsuit relates to an incident where criminal charges have been laid – most likely when the police have charged you with something and you retaliate by suing them – the usual practice is to wait for the criminal case to be dealt with before you start your own action. A win in a criminal case is a good start to civil proceedings (a lawsuit) though you are able to sue the police even if you've been convicted (such as when the police have used particularly excessive force to deal with minor offending), but a conviction certainly makes a positive result from a lawsuit less likely.

Note that in a civil proceeding the required proof to win a case is lower. In a criminal case, the charge must be 'proved beyond reasonable doubt', in a civil case, such as a lawsuit, the result is decided 'on the balance of probabilities'. So a judge could rule that while the police evidence against you wasn't strong enough to give you a criminal conviction, it is strong enough to rule in favour of the police in a lawsuit. Of course, the same principle means a civil case need not be as strong as a criminal case against the police would need to be in order to succeed.

Usually the costs involved in a lawsuit make both sides reluctant to go to court and an out of court settlement is reached. If you do go to court and lose, it will cost you thousands, or tens of thousands, of dollars in court costs.

Private prosecutions

A private prosecution against a police officer is also an expensive process. You won't get legal aid to pay a lawyer, although if you have a strong case you might get court costs – even if you lose. But if the judge thinks your case was vexatious or trivial you won't get anything.

Once again expect a long process and presume police will appeal at any stage of the process in which you make some headway. The first step of the process is a depositions hearing to decide whether there is enough evidence to proceed with the case. After this, it proceeds like any other criminal court case, or at least it's supposed to. In reality it is likely that judges and possibly jurors will feel a case taken privately requires a higher level of proof than a case taken by police or the crown.

The attempt to convict the cop who shot Steven Wallace at Waitara in 2000 was the first time a private prosecution for murder has been taken against a serving police officer. The officer was found to have acted in self-defence and was ac-

quitted. Taking the case reportedly cost the Wallace family \$120,000 in legal costs.

Interestingly, the Wallace's lawyer chose not to bring evidence of the cop's psychological problems resulting from an earlier shooting. This illustrates the problem with taking a case against an individual rather than an institution. Obviously, issuing firearms to a police officer with psychological problems suggests extremely poor judgement on behalf of the police force, so a lawsuit, rather than a private prosecution, may well have succeeded.

Disputes tribunal

Formerly known as the small claims court, the disputes tribunal is an option if the cops (or anyone else) have damaged something of yours or not returned something. The procedure is simple and cheap.

You lodge a claim by filling in a form at the tribunal office. You pay a fee of \$30 for a claim of up to \$1000, \$50 for a claim between \$1000 and \$5000 or \$100 for a claim of up to \$12,000. If the claim is over \$7500, the person you are claiming the money from must agree to take the case to the tribunal, rather than a regular court.

The hearing just involves you and the person you are making a claim against sitting down with a referee and thrashing the thing out. Either you reach a decision or the referee makes a ruling. You can call witnesses and bring documents to support your claim. The tribunal can summon witnesses if they are reluctant to attend. No lawyers are allowed to be present.

You can pick up a handy little pamphlet that describes the procedure from the tribunal.

Warrants and trespass orders

SEARCH warrants are a document that gives the police the right to search your home or person. They allow the police to conduct a search when they would otherwise not be legally entitled to do so.

A warrant is a form which details the place to be searched and the things they are searching for.

The police can't get a warrant just on a vague suspicion that there is something criminal going on – they must have a specific item in mind that is illegal, has been used to commit offences or will provide evidence of offences. They can't undertake 'fishing expeditions' – making a search because they have a hunch something dodgy might turn up.

This means that if they are looking for a stolen TV, for example, they shouldn't be going through your wallet or tobacco pouch. They must confine their search to places where the object looked for could possibly be.

Having said that, there are plenty of warrants issued on weak grounds. In order to have a warrant issued, police must go to either a judge or a justice of the peace with a sworn affidavit stating the reasons for the search. Warrants are seldom refused, and very little is done to check that the evidence presented is accurate – in many cases it has proved to be wildly exaggerated or out of date.

Police tend to use tame JPs that are willing to sign anything put in front of them, but some judges aren't much better. It seems the warrant is noted on the police computer system when it's issued so any other cop with an interest in the address or people to be searched can hear about it.

In an incident in Wellington a few years back, a fairly innocuous warrant was issued to search for stolen property, a couple of cops turned up on the suspect's doorstep, took one look at him and

told him it was a case of mistaken identity and they didn't need to search. However, the accompanying plainclothes cop, who happened to be the 'community liaison officer' responsible for keeping an eye on political groups, took the opportunity to search the room of an animal rights activist who lived at the same address. The officer in question later claimed it was all a coincidence, but after a some other botch-ups, he quit the force under a cloud a few months later.

If the cops show up at your door with a warrant, check that it is signed, correctly dated and the address is correct. Cops have been known to burst in on the wrong house on a few occasions. If it's not signed, don't let them in. They are often reluctant to show you the warrant, but they are legally required to do so if you ask.

Police shouldn't damage things or make a mess of the place, although they are allowed to force locks or break open locked containers if it's necessary to gain access. If they do, take photos and kick up a fuss. The Bill of Rights Act protects you from unreasonable search, whatever that means.

Trespass orders

Trespass orders are documents issued by the police, or by a property owner or manager telling you to keep off the property. They are issued under the Trespass Act 1980 and usually remain in force for two years. They don't have to specify a reason why you should keep off the property. In essence, they replace the initial warning for trespass you must be given in order to have a chance to leave the property before you are arrested, or 'reasonable force' is used to remove you.

Once you've received a trespass order you can be arrested without warning if you are seen in the place in question.

Usually they are issued to people who have committed an offence on the property or are suspected of being inclined to do so.

It must be signed and dated, and the issuer must keep a copy to present should you be arrested for breaking it.

A property owner can pretty much order anyone off their property as they choose, without needing a reason. There is more dispute over the use of such orders in relation to semi-public areas such as universities or council property. There may be a chance of having the order quashed if you can prove you have lawful reasons for being on a property and the reasons for keeping you off are weak or invalid.

Trespass orders can be challenged in two ways, the first is to simply break the order and hope that the court will declare the order invalid. Of course if it doesn't you'll end up with a conviction.

The other way is to go to a lawyer and get them to apply to the High Court under the Declaratory Judgements Act 1908 to have the order quashed. There is currently some doubt as to whether a district court judge has the power to do this as well so check it out. Could be an expensive business in court costs and lawyer's fees if you lose.

If you think a trespass order is unfair, probably the first step is to write to the issuer and explain why you think it should be revoked. If this doesn't get you anywhere, have a lawyer write a further letter threatening to take legal action. Entering into correspondence with people may at least force the issuer to put their reasons for issuing the order in writing, which can be useful for future legal action.

Arrest warrants

These are just a notice telling cops to arrest you if they can find you. They are commonly issued if you don't turn up in court, or if the cops aren't sure where you are.

If you find out that the cops have a warrant out for you, you can make them do the work to find you, but that might mean having

them turn up halfway through your favourite soap opera, or worse, halfway through a pleasant indulgence in an illegal substance.

Given the small size of New Zealand, you'd have to be pretty keen to try and hide out until they give up, so fronting up to the police station when you have some time to kill isn't as stupid as it sounds. If the case is of some significance, don't forget to get the media along.



SOME JUDGES
EVEN QUESTION OUR VERSIONS
OF EVENTS. NOW THAT'S NOT
VERY FAIR, IS IT?

The Official Information Act

THE OIA has been the most useful things the government has done for activists in ages. It replaced the Official Secrets Act and reversed the previous principle that government information should be secret unless there was a good reason for making it public. Now information is supposed to be made public unless there is a good reason for keeping it secret, trouble is, the government reckons there's gazillions of these "good reasons" and trots them out with annoying frequency.

Essentially the act says you can ask for information the government holds. You can do this verbally or in writing – the latter is best as it gives you a record of what you asked for and when. The government body you address your request to must answer within 20 working days or explain why there is a delay. If they don't give you the information you want they must tell you why not.

You can demand information from ministers, government departments, state owned enterprises, local government, health authorities and educational institutions. The information can be written, visual, held on audio or video tape or even be held in somebody's memory.

They can turn you down for all sorts of reasons, some of the more common are that the information is a commercial secret, that giving it to you would prejudice security and defence, the maintenance of law and order, the detection of offences or the right to a fair trial, would prematurely make public government economic decisions resulting in serious damage to the New Zealand economy or that the disclosure of useful information given to the government in confidence would prevent further information from the same source being given.

Communications between lawyers and their clients are referred to as 'privileged' and cannot be made public, the same applies to information given as part of an investigation by the Police Complaints Authority.

Costs

Personal information should be given to you free, otherwise charges apply. The guidelines suggest the first 20 pages of A4 photocopying and the first hour of staff time should be free, after that you can expect to be charged 20 cents a page and \$38 per half hour of time. Staff time includes time spent looking for the information and editing it before release. It doesn't include time spent deciding whether or not to release it or time spent looking for information that isn't where it should be.

The charges can be waived if it is in the public interest for it to be released. The level of the charges given above are guidelines only, but if someone is trying to charge you a lot more than this you can write to the Office of the Ombudsman seeking a review. If the costs are significant they can ask you for a deposit after they've decided to release it and before they hand it over.

You can sometimes cut down on your costs by making several small requests rather than one big one, thus getting less than 20 pages at a time, or by first asking for the contents pages of large documents, then getting the particular chapters or sections you want.

As far as legal stuff goes, the sorts of things you might be asking for includes police regulations and manuals, instructions issued by government departments to their staff or other agents, information about police operations, information about property ownership or boundaries and information held on yourself – in order to find out what they know.

Expect to get turned down fairly frequently. If you are unhappy about the reasons given, you can appeal to the Office of the Ombudsman who will often find in your favour. Going to the ombudsman is usually what you do if they are messing you around. One local plod who thought he was being smart by destroying speech notes that were the subject of an activist's OIA request was ordered

to do extra homework by the ombudsman – he was told to write them out from memory before handing them over.

You can sometimes get useful information by asking for broad outlines or “a description in general terms” when they refuse to give you details. This particularly applies when you’ve been turned down due to commercial sensitivity or for asking about the way police operate.

It’s worth ducking into a library and reading through the act. A lot of government flunkeys don’t understand what it requires of them and will tell you silly things about it not applying to the things in question, so read up on it first and don’t take any nonsense.



THE ANSWER'S NO.
NOT A CHANCE. FORGET IT.
NO WAY. NEVER. SO, ANYWAY,
WHAT WAS THE QUESTION?

Know yer copper

For a long time, the official strength of the New Zealand police force was fixed at 6666, which was almost too silly to be true, now it's around 7000.

Police come in all shapes and sizes, with attitudes ranging from simple pig-headedness to complex justifications for doing things they know deep down are dodgy as hell. Consequently, it is important to get to know which of the individual cops in your area can be dealt with as semi-reasonable human beings and which can't. When everything is turning to custard, it can be really useful to know which cops will listen to you, and which will just scream at you. For example, there are times when the police over-reaction is the result of a genuine misunderstanding, rather than brutishness. You might also need to give them information about an arrestees medical condition, so they can't claim ignorance if the person isn't taken care of.

New Zealand is pretty small, so you are going to run across the same cops all the time, they are going to get to know who you are, so return the compliment. Make notes after talking to police, keep a record of who is who.

Police units

Patrol and beat sections are your normal everyday coppers, patrol sections specialise in driving around looking important, the beat section are plods who mostly wander around on foot in the central city, they might turn up at demonstrations if things are expected to be low-key.

Team Policing Units or Strategic Response Groups were mentioned earlier, the heavy squad. The Diplomatic Protection Squad were also discussed earlier.

Dog handlers are rare at demos, they get called out to track

people down who have run away. If you are protesting outside some official event and you see a dog van (a station wagon with a built-in cage in the back), it'll probably just be a search team checking the venue with a dog trained to sniff out explosives.

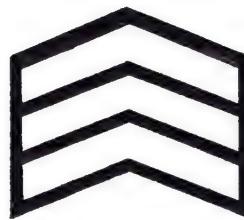
The Criminal Investigation Bureau are detectives who mainly work in plain clothes and mostly concern themselves with real crime. They sometimes turn up to keep an eye on things and mingle with the crowd. Not to be confused with undercover cops who are seriously trying to infiltrate organisations. Detectives seldom make much effort to pass themselves off as normal people. They often hang out with the uniformed cops, so make a mental note of well-dressed people hanging out with other cops.

There's a number of units you are unlikely to have much to do with, such as the dive squad, the National Drug Investigation Bureau, The Electronic Crime Laboratory the Financial Intelligence Unit and others. Check out the police website if you're interested in a quick guide to these units.

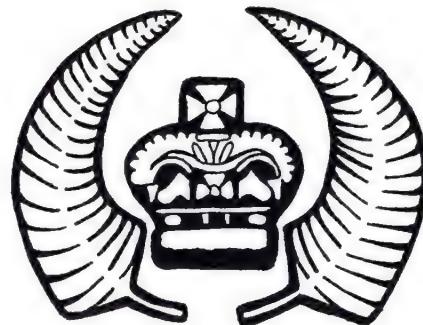
There's several forensics units, fingerprints, photography, document analysis and so forth. Forensics are a big subject, the British guide *Without A Trace* is a bit dated, but well-worth looking out for. A lot of police forensic work is contracted out to the Institute of Environmental Science and Research Ltd in Porirua.

The Armed Offenders Service are the firearms specialists, they include a anti-terrorist squad named the Special Tactics Group who train and liaise with the army. You won't see much of them, I hope. The DPS are also selected for their skill with guns and frequently carry them. Generally, police firearms are closer at hand than people like to think, but unless they have reason to think you are also armed, they won't usually be a problem.

The Criminal Intelligence Service are the guys keeping files on people who read publications like this one. Police intelligence units,



Sergeant



Senior Sergeant



Inspector

Figure 2. Police rank badges.

obvious jokes aside, don't usually have the resources to spend all their time keeping tabs on political activists. They tend to get called in to produce reports every now and then when a big demo is coming up, or a campaign is starting to get stroppy. Consequently, the intelligence tends to be flawed and patchy, and probably more dangerous than solid, carefully researched evidence would be. Like all intelligence operations, the tendency is to hype the material in order to justify the staff's jobs.

The odd intelligence reports that've surfaced have provided countless hours of amusement to activists as they read the ludicrous things police have written about them. They frequently contain numerous presumptions, extrapolations and exaggerations presented as fact. Usually the spelling isn't too hot either. Sure, they are a bit of a joke, but activists often forget how alien their activities, and sometimes lifestyles, are to many other people. Lots of people out there are prepared to believe the things the police say, no matter how out of step with reality.

Police ranks

You are mostly going to be dealing with Constables, Sergeants, Senior Sergeants and Inspectors. Further up the list are the Chief Inspectors, Superintendents, Chief Superintendents, Deputy Assistant Commissioners, Assistant Commissioners, Deputy Commissioners and the top dog, the Commissioner.

The usual operational unit is composed of four to twelve constables under a Sergeant or Senior Sergeant. An inspector might turn up if several units are involved, or just because they are taking things seriously. The presence of Inspectors or higher ranks implies they think the situation is particularly volatile, so pay attention to the ranks of those in charge.

Rank badges of the lower ranks, worn on their shoulder tabs are shown in Figure 2.

Chemical warfare

THE local plods have two chemical weapons in their armoury – capsicum spray also known as pepper spray or OC spray and CS gas, commonly called tear gas. So far, neither has been used at protests in New Zealand, but there's always a first time. Remember the standard PR24 baton was considered a specialist tool for particularly difficult operations for years, but became standard issue. Expect the same to happen with other weapons.

OC spray

Christchurch police have been reported to have tested the OC spray, some cops volunteered to receive a dose of it and describe it as being worse than tear gas, and like having a “hot poker pushed into your eyes.”

Capsicum spray is made by diluting capsaicin (oleoresin capsicum), an oil derived from hot peppers. Usually a 10 percent solution is used resulting in a mix 300 times as hot as Jalapeño pepper and 60 times as hot as the hottest cayenne (1,500,000 Scoville heat units for the technically minded).

The spray causes a burning sensation in the eyes and skin, tingling in the lungs and throat, coughing and shortness of breath if breathed in, and sometimes paralysis of the larynx, preventing speech. Those hit by the spray normally drop to the ground and keep their eyes closed for 20 to 30 minutes.

The initial first aid measure is to flush the affected areas with plentiful quantities of saline solution. Fanning or walking a person around so that air passes over the affected area will also help.

In the United States there is growing concern about such sprays after more than 60 deaths following police use of sprays on suspects. An article in the *Los Angeles Times* for June 18, 1995, quotes the president of a Utah capsicum spray manufacturing company,

Advanced Defence Technologies, as agreeing that the sprays have a role in reported deaths.

“These are weapons... Clearly this not a breath freshener or an underarm deodorant,” he says.

However, difficulties in pin-pointing the actual cause of death in cases studied make it hard to conclusively prove the dangers of capsicum spray. In all the US cases, additional factors may have contributed to the cause of death – alcohol and drugs, use of stun guns and handcuffs, and “positional asphyxia”, breathing difficulties caused by victims being laid face down, or in other constrictive positions, while being restrained. Conditions such as asthma, bronchitis and enlarged hearts may also increase susceptibility to the effects of the spray.

Interestingly, police in California, North Carolina and Florida have filed lawsuits to stop compulsory exposure to the sprays during training, claiming that officers have suffered serious health effects as a result.

A study by US doctors reported in *The American Journal of Forensic Medicine and Pathology* came to the conclusion that capsicum spray “appears to be relatively safe”, but goes on to say “We have insufficient physiologic data at this time, however, to conclude that capsaicin is incapable of causing or contributing to death.”

I would recommend you avoid it.

Tear gas

CS gas is less devastating stuff. It causes burning on the skin, makes your eyes water and has an acrid smell. A waft of it across your face won’t put you out of action, but a few minutes of exposure or a concentrated dose will make you very uncomfortable.

Usually, CS looks like a white smoke, but the cops also have an

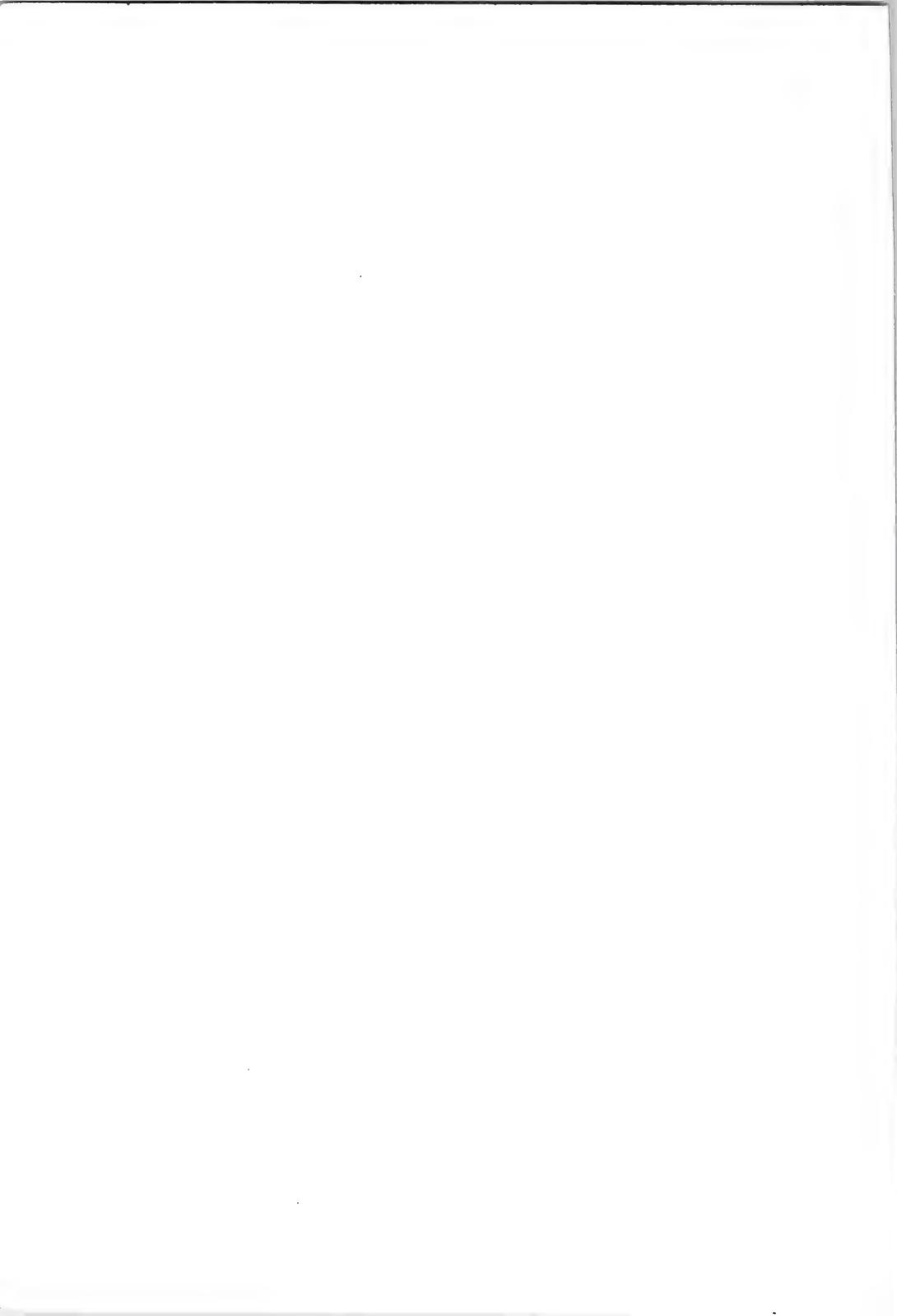
invisible variant mainly used for flushing people out of buildings where they are holed up. CS can be spread by a number of methods, but canisters thrown or fired from a launcher are the most common. These spray out the gas and get quite hot. If you move quickly and have good gloves they can be thrown clear. CS gas is sometimes used to thin the crowd out in preparation for a baton charge, so watch your back while dealing with it.

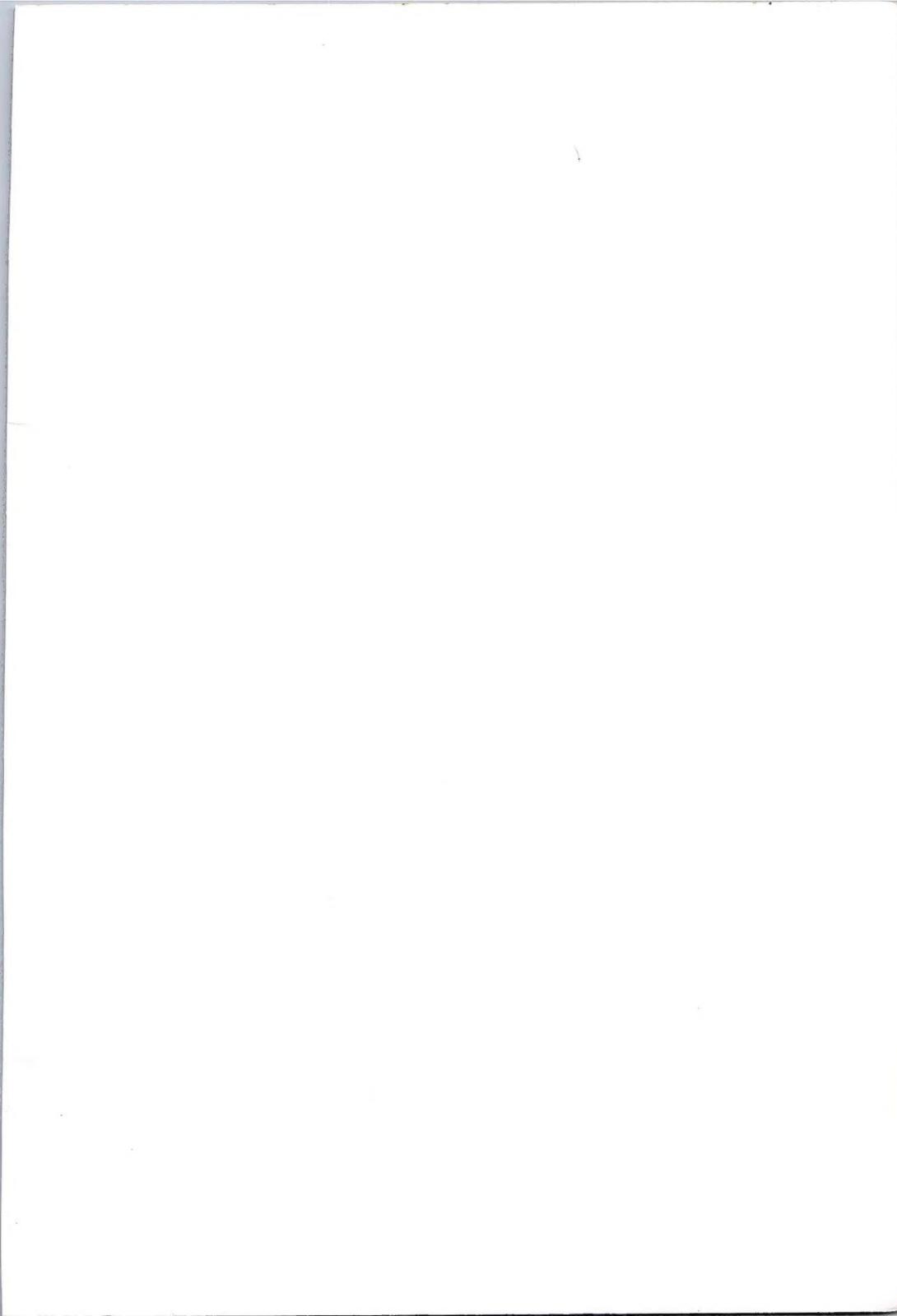
If you have been exposed to CS, get clear of the gas and wash your face and eyes with lots of water. After a few minutes you should be ready to go again. Wearing goggles will help as will breathing through a bandana soaked in vinegar or lemon juice. A gas mask is the ultimate response and can be bought from some army surplus shops, but it will have to be in good order and fit well to be of any use.

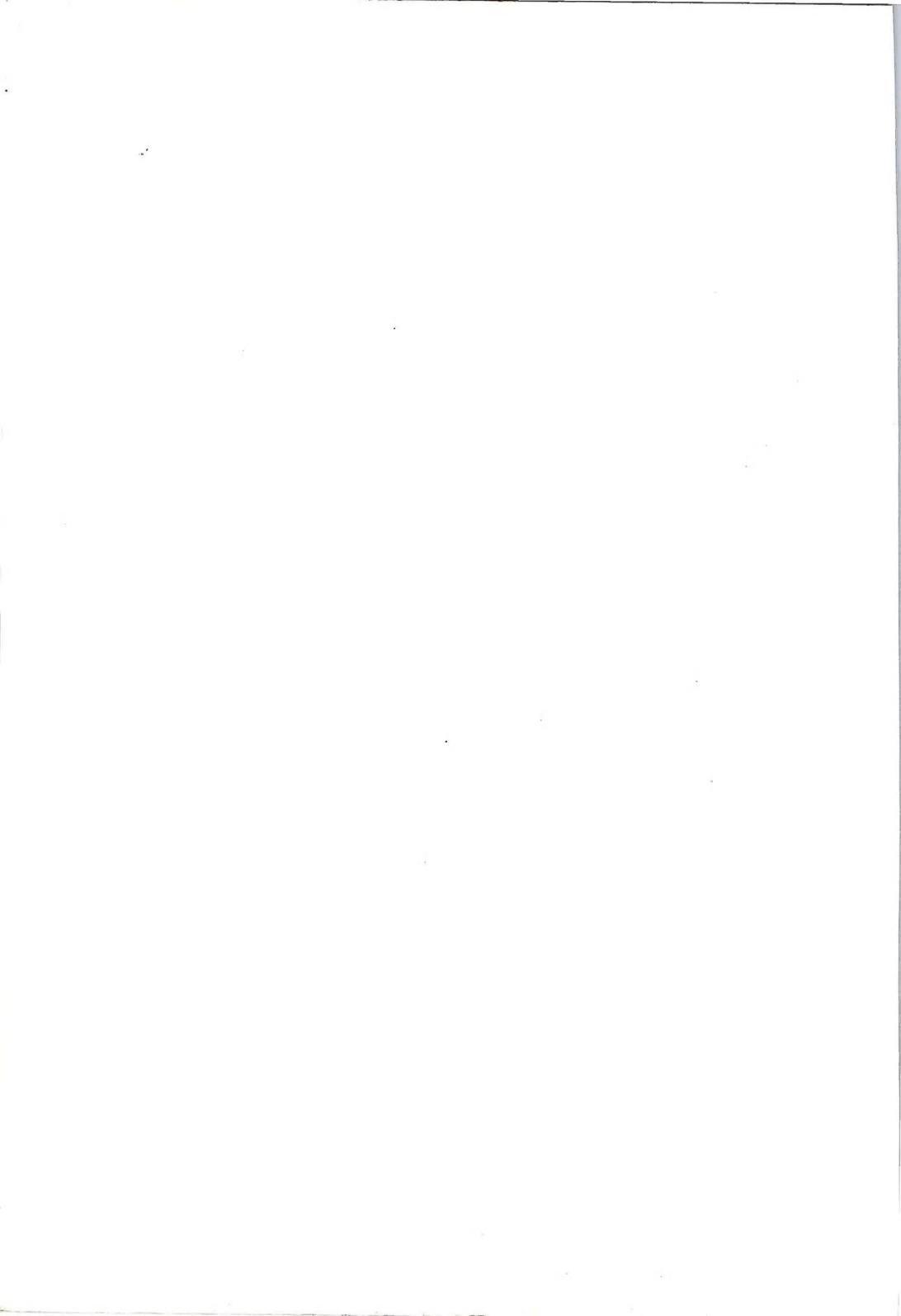
If you're expecting tear gas avoid sunblock, face paint or make-up which may help the gas adhere to the skin. Silicone barrier cream, used to protect the skin from chemicals, might help, but you'll have to test it yourself.

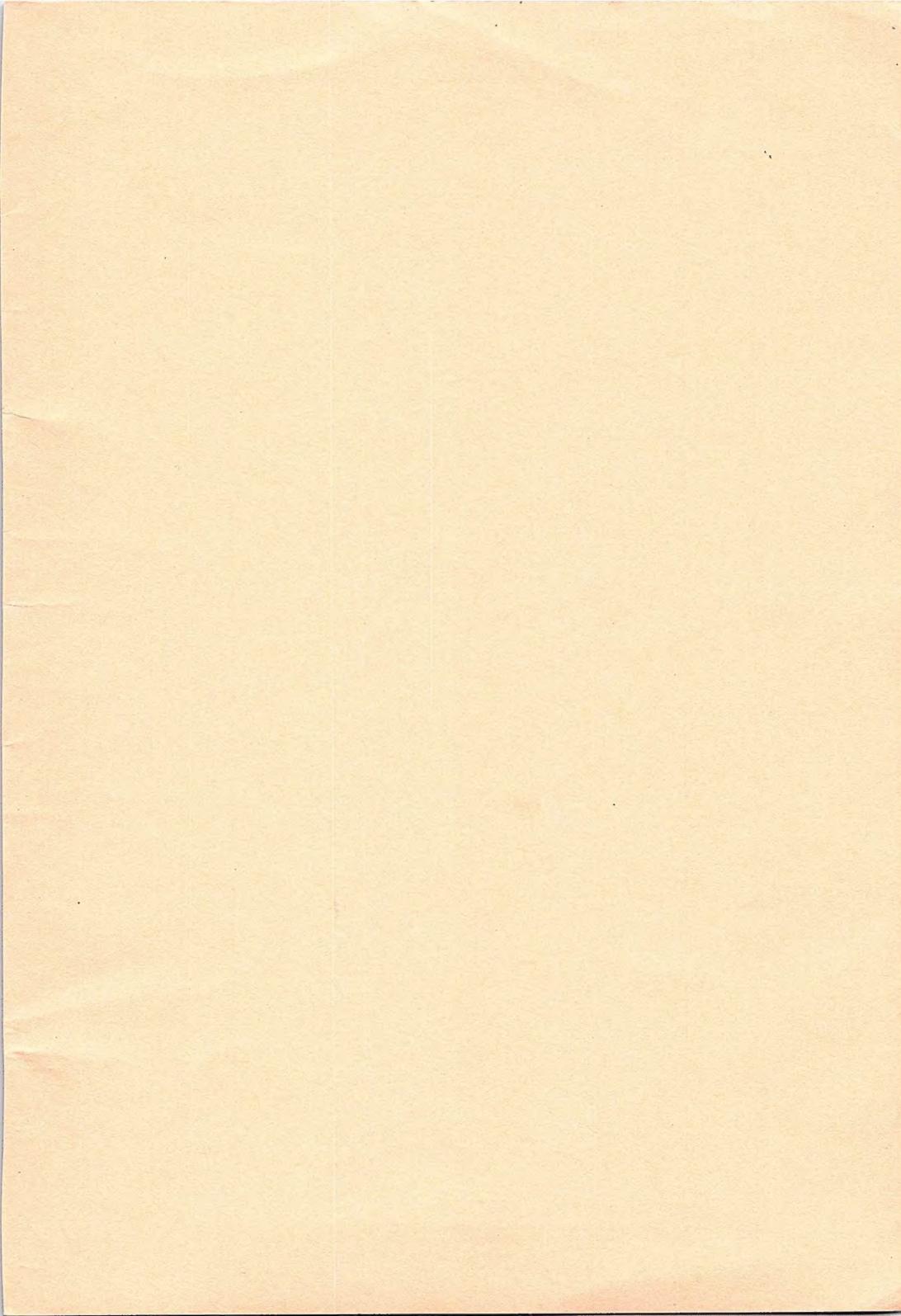
Police are looking at other 'less than lethal' weapons under something called Project Lincoln. Possible nasties for the future include the electric 'taser' stun gun used in the United States and in some Australian states, baton rounds fired from a 12-gauge shotgun (which have proved lethal in Northern Ireland) a gun which fires breakable projectiles filled with OC powder, OC foam and a large fire extinguisher-type capsicum spray called a Pratt Device currently used by police in Victoria. Fun, fun, fun.











The New Bush Lawyer's Handbook is a guide for activists and others facing police attention or going through the court process.

The state will tell you that ignorance of the law is no excuse, but the legal process is made inaccessible, mysterious and confusing, the province of experts and specialists available for hire to the rulers and the rich.

If you count yourself among the ruling class, or have no interest in challenging them, you probably won't be needing this pamphlet. If, on the other hand, you're actively working to create a better world, I'm afraid you probably will.

This handbook sets out to de-mystify legal processes and explain, in plain English, how you can defend yourself when in the enemy territory known as the 'justice' system.

Committee for the Establishment of Civilisation

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